Decision 17-07-011 July 13, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions Raised in the Limited Rehearing of Decision 08-09-042.	Investigation 15-11-007 (Filed November 5, 2015)

ORDER DENYING REHEARING OF DECISION (D.) 16-12-025

I. INTRODUCTION

In this Order, we dispose of the Application for Rehearing of Decision (D.) 16-12-025 (or "Decision") filed jointly by the Center for Accessible Technology, The Utility Reform Network, and the Greenling Institute (together, the "Joint Consumers").

This Commission's telecommunications regulation has evolved over time in response to technological advances as well as State and federal policies favoring a competitive telecommunications marketplace.[1] Consistent with that policy, in the mid to late 2000s two Commission decisions largely deregulated traditional landline telephone service in California. Those decisions are commonly referred to as *URF I* and *URF II*.[2]

In *URF I,* we adopted a Uniform Regulatory Framework ("URF") to revise rate regulation and provide more pricing flexibility for the large and mid-sized incumbent

[1] See, e.g., Pub. Util. Code, § 709, subd. (a) ["It is the intent of the Legislature that all telecommunications markets subject to commission jurisdiction be opened to competition not later than January 1, 1997…."].

[2] *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities* ("*URF I*") [D.06-08-030] (2008); *Order Instituting Rulemaking into the Review of the California High Cost Fund B Program* ("*URF II* ") [D.08-09-042] (2008), as modified by *Order Instituting Rulemaking into the Review of the California High Cost Fund B Program* ("*Order Granting Limited Rehearing of Decision (D.) 08-09-042*") [D.15-11-023] (2015).

local exchange carriers ("ILECs").[3] Our decision was based on the economic theory that increased competition would drive rates close to cost, thus a competitive market could act in place of traditional rate regulation.[4] Accordingly, the four largest ILECs were granted broad pricing freedoms for most telecommunications services, new telecommunications products, bundles of services, promotion, and contracts. However, to soften any rate impacts to residential customers, we placed price caps on basic residential service rates until January 1, 2009.[5]

In 2007, we ordered a transition plan to be developed that would allow a gradual phase-in of full pricing flexibility for basic rates to avoid any "rate shock" resulting from sudden retail rate increases.[6] In *URF II*, we adopted that transition plan, subject to continued monitoring to ensure that prices would remain affordable in a deregulated environment.[7]

This Investigation ("OII") was opened as a data driven exercise, consistent with the monitoring envisioned by *URF II*. Its purpose was to collect information regarding the state of market competition today, report on recent developments, and identify what the Commission can do or recommend to further promote competition and

[3] *URF I* [D.06-08-030], *supra,* at pp. 2-5 (slip op.), as modified by *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities* ("*Order Modifying and Granting Limited Rehearing of Decision (D.) 06-08-030, and Denying Rehearing of Decision, as Modified, in all Other Respects*") [D.06-12-044] (2006) at pp. 1-3 (slip op.).

[4] *URF I* [D.06-08-030], *supra*, at p. 262 [Finding of Fact Number 15] (slip op.).

[5] *Id.* at pp. 2-5, 132, 263-264 [Findings of Fact Numbers 26-40], & p. 280 [Ordering Paragraph Numbers 1-8] (slip op.); D.06-12-044, *supra,* at pp. 1-4 (slip op.); *Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions Raised in the Limited Rehearing of Decision 08-09-042* ("Competition OII"), dated November 12, 2015, at pp. 2-5 (slip op.). The four largest ILECs were AT&T, Verizon, SureWest, and Frontier.

[6] *Order Instituting Rulemaking into the Review of the California High Cost Fund B Program* [D.07-09-020] (2007) at pp. 1-12 (slip op.). The CHCF-B program was designed to support universal service goals by ensuring that basic telephone service remains affordable in high cost areas within the service territories of the major incumbent ILECs. Under the CHCF-B Program, Carriers of Last Resort ("COLRs") must accept all reasonable requests for basic residential service for all customers within their designated service area. CHCF-B funds are used to subsidize basic rates in those areas. (*Id* at pp. 2-3; See also Pub. Util. Code, §§ 275.6, subd. (b)(1) & 276.5.).

[7] *URF II* [D.08-09-042], *supra,* at pp. 2-7, 54-56 [Ordering Paragraph Numbers 1-6] & p. 156 (slip op.).

facilitate entry in the voice and broadband markets.[8] The Decision challenged here reported on our findings.[9] Among the key findings were the following:

- The intermodal voice market in which traditional landline voice competes with wireless and VoIP is moderately concentrated;
- Wireless and cable-based Voice over Internet Protocol ("VoIP") services have rapidly displaced traditional landline phones as the primary modes of voice communications;
- The voice market is tied to the broadband market;
- The residential high speed broadband market is highly concentrated;
- Competitive bottlenecks and barriers to entry, such as access to utility poles, may limit new market entrants and raise prices for some services;
- Despite many service and technological advancements, the "digital divide" between economic and geographical subgroups has widened;
- It is unclear whether the growth in alternative means of voice and data communication has kept service for traditional landline service at just and reasonable levels – or even whether that is a relevant question given that most consumers now obtain voice service in a bundle with broadband and other services; and
- Improving the efficiency of the telecommunications markets should drive rates closer to costs, and ensure just and reasonable rates for service.[10]

[8] Competition OII, at pp. 2-5 (slip op.) (See also D.15-11-023, *supra,* at pp. 11-14 [Ordering Paragraph Numbers 1-4] (slip op.); and D.16-12-025, at pp. 2, 9, 187 [Finding of Fact Number 15].)

[9] Unlike the past wireline voice-only market, today's market is intermodal. The network has evolved from a public switched telephone network to a multi-service platform. Competition exists between different technologies that operate in the same larger market, such as: traditional wireline telephony; wireless telephony; digital and data services; and broadband Voice over Internet Protocol ("VoIP"). The Commission collected information necessary to report on the various sub-markets and evaluate what could be done to promote or facilitate entry in the voice and broadband markets. (Competition OII, at pp. 2-3 (slip op.); D.16-12-025, at pp. 2-14, 187 [Finding of Fact Number 15]; see also Competition OII, at pp. 1-2 (slip op.); Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, dated July 1, 2016, at pp. 1-5, 10, Appendix A.)

[10] D.16-12-025, at pp. 2-4, 152, 184, [Finding of Fact Numbers 1 & 4] & pp. 191-192 [Conclusion of Law Number 17].

The Decision also ordered the following to assist in the Commission's continued market monitoring efforts:

- Required all certificated and/or registered communications providers to annually submit specified voice and broadband subscriber and deployment data;
- Required all certificated and/or registered communications providers to submit specified wholesale services information;
- Required Commission staff to collect and report on availability and penetration rates for voice and broadband services;
- Required affordability and service needs issues for low income, disabled, and rural/tribal customers to be addressed as part of Public Purpose Program administration;
- Directed that the Commission's ongoing administration of federal pole attachment statutes and Commission's General Orders be used to ensure non-discriminatory access to network infrastructure;
- Directed Commission staff to conduct a workshop to solicit feedback on the Commission's interconnection dispute resolution process as a mechanism to reduce any barriers to competitive market entry;
- Directed Commission staff to develop a plan for improving the CalSPEED program dataset for residential broadband in order to better monitor and evaluate the market; and
- Ordered the issuance of a new Rulemaking within nine months to examine telecommunications access to poles, conduits, and rights of way.[11]

The Joint Consumers filed an Application for Rehearing challenging our Decision. Their principle argument is that we erred in closing this proceeding, and it should have remained open to: (1) address alleged market failures in the stand-alone voice market; (2) address alleged market failures in the intermodal market; and (3) collect more information. They also contend we failed to adequately address comments on the

[11] See, e.g., D.16-12-025, at pp. 2, 156-165, 192-193 [Ordering Paragraph Numbers 1-5].

Proposed Decision. A Response was filed by a joint coalition of telecommunication industry providers (together, the "Respondent Coalition").[12]

We have reviewed each and every issue raised by the Joint Consumers and are of the opinion that good cause has not been established to grant rehearing. Accordingly, the Application for Rehearing of D.16-12-025 is denied because no legal error was shown.

II. DISCUSSION

A. The Rehearing Application's Lack of Specificity and Analysis to Support Legal Error

According to the Joint Consumers, the Decision's own findings show that we failed to meet our statutory obligation to ensure adequate telecommunications service, ensure just and reasonable rates, and protect vulnerable consumers. Accordingly, they argue it was error to close the docket, and regulatory policies should be adopted to ensure that all customers have access to affordable, high quality telecommunications services. (Rhg. App., at pp. 1-5.)

Although we will address the Joint Consumers factual allegations, we could simply reject this rehearing application for failing to meet the basic statutory requirement for a lawful application for rehearing. Public Utilities Code section 1732 requires that rehearing applications specify the ground or grounds on which an applicant considers the decision or order to be unlawful.[13] It is intended to alert the Commission to legal error so that it may be corrected.[14]

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[12] The Respondent Coalition includes: Pacific Bell Telephone Company d/b/a/AT&T California and New Cingular Wireless, PCS, LLC (collectively, "AT&T"); the California Cable & Telecommunications Association ("CCTA"); Charter Fiberlink CA-CCO, LLC; Comcast Phone of California, LLC; Consolidated Communications of California Company and Consolidated Communications Enterprise Services; Cox California Telcom, LLC, d/b/a Cox Communications; Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, Frontier Communications of the Southwest, Inc., and Frontier California, Inc. (collectively "Frontier"); T-Mobile West, LLC; and Time Warner Cable Information Services (California), LLC.

[13] All subsequent section references are to the Public Utilities Code, unless otherwise specified.

[14] Cal. Code of Regs., tit. 20, § 16.1, subd. (c). (See *Order Instituting Rulemaking to Consider Adoption*

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The Joint Consumers recite a number of telecommunications-related statutes.[15] But they fail to explain or establish how we violated any individual statute, or even how each statute applied to the particular inquiries in this OII. It is not enough for an applicant to just cite a law, legal principle, or statute. An applicant must explain with specificity why it applies and how it was violated in the present circumstances.[16] That was not done here.

The Joint Consumers also fail to establish any need to keep this proceeding open. As noted above, the Decision already ordered the collection of more data, provided for continued monitoring, and ordered that a new Rulemaking be issued.[17] These actions were the functional equivalent of leaving the proceeding open and the Joint Consumers fail to address why these steps were insufficient or violated any legal requirement.

Finally, whether to close a proceeding is a purely an administrative procedural determination that is within our sole discretion to make.[18] In this instance, the

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of General Order and Procedures to Implement Digital Infrastructure [D.10-07-050] (2010) at pp. 19-20 (slip op.).) The burden to prove legal error rests with the rehearing applicant.

[15] The Joint Consumers cite Public Purpose Program statutes relating to Universal Service, the CHCF-B, the Deaf and Disabled Telecommunications Program and the California Teleconnect Fund. (Rhg. App., at pp. 2-3, citing Public Utilities Code §§ 275.6, 278, 280, 709, & 709.5.)

[16] D.10-07-050*, supra,* at p. 19 (slip op.). The Joint Consumers merely reiterate the claims and positions they asserted during the course of the proceeding. The Decision already considered and rejected these arguments. (D.16-12-025, at pp. 166-170.) Simply reiterating them here does not establish legal error. (See *Application of Exposition Metro Line Construction Authority for an Order Authorizing the Construction of a Two-Track-at-Grade Crossing for the Exposition Boulevard Corridor Light Rail Transit Line* [D.11-10-022] (2011), at pp. 5-6 (slip op.)).

[17] See *ante,* fn. 11. That Rulemaking was opened on June 29, 2017 by *Order Instituting Investigation into the Creation of a Shared Database or Statewide Census of Utility Poles and Conduit in California and Order Instituting Rulemaking into Access by by Competitive Communications Providers to California Utility Poles and Conduit Consistent with the Commission's Safety Regulations.* This document can be located at: http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=191499332.

[18] Cal. Const., art. XII, § 2; *Utility Consumers Action Network v. Public Utilities Commission* (2000) 187 Cal.App.4th 688, 699-700 [Commission discretion to adopt its own rules and procedures.]. The determination to close this proceeding was also consistent with the statutory requirement to resolve proceedings in a timely manner. (See Pub. Util. Code, § 1701.5 [General requirement to complete ratesetting and quasi-legislative proceedings within 18 months].)

proceeding was never intended to develop or adopt new rules or regulations. As stated above, its only purpose was to collect information and provide a snapshot view of the state of competition as of December 31, 2015.[19] That is exactly what the Decision did.

The Joint Consumers suggest that the Commission hid behind this narrow proceeding scope to avoid acting on market failures. Yet, while we agree that intermodal competition today is not quite as expected when the URF decisions were issued, the record did not establish any clear market failures.[20] Nor do the Joint Consumers cite to any evidence that proving such an allegation. They also fail to identify or establish what, if any, new rules were warranted. Accordingly, we find no legal error or basis to have kept this proceeding open.

B. Stand-Alone Voice Market

The Joint Consumers contend that because the voice market for residential landline service is highly concentrated, we should have left this docket open to intervene if rates are found to exceed just and reasonable levels.[21] They add that even the Decision acknowledged high concentration levels pose a risk of inadequate competition. (Rhg. App., at pp. 6-8, citing D.16-12-025, at pp. 69-71, 184-189 [Finding of Fact Numbers 4, 7, 14, 17 & 28].) We reject this contention.

First, the Joint Consumers neither argue nor establish that residential landline rates *are* in fact unjust or unreasonable today. And they cite to no evidence that would prove such a contention. They merely argue the Commission must intervene "if"

[19] Competition OII, at pp. 1-2 (slip op.); Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, dated July 1, 2016, at pp. 1-5, 9 ["…this Investigation is a descriptive exercise, aimed at taking a "snapshot" of the market as it existed on December 31, 2015, and examining its development since the URF decisions eight and ten years ago respectively. We are proposing no new rules."], p. 10 ["Here, we are not even engaged in making rules or regulations"], Appendix A; D.16-12-025, at pp. 2-14, 187 [Finding of Fact Number 15].

[20] D.16-12-025, at p 132.

[21] Wireline or landline voice service refers to traditional coper-based legacy connections (as opposed to voice service via wireless, broadband, VoIP, etc.). Most wireline customers obtaining service from either a legacy telephone provider or local cable provider. (D.16-12-025, at p. 185 [Finding of Fact Number 7(a)].)

rates become unreasonable. (Rhg. App., at p. 8.) But that concern alone is not an adequate basis to leave a docket open indefinitely.

Second, while we found that Market Share Analyses showed moderate to high concentration throughout various communications markets, there was no evidence of a monopoly in any particular market.[22] The evidence showed concentration in the largest landline voice markets, while high, has actually declined on a statewide basis.[23]

Data also indicated that because today's market is intermodal, the price of stand-alone voice service is not as relevant to the market as it once was. Voice communication itself is a diminishing segment of the market, and most voice customers receive service as part of a larger service bundle with wireless and broadband VoIP service.[24] Because most customers have moved away from legacy landline carriers, lower price stand-alone voice service is increasingly irrelevant to the typical customer.[25] And competition in intermodal voice services (traditional voice, wireless and VoIP) has increased since 2001, and is generally strong.[26]

In light of these facts, imposing rate regulation, at least at this juncture, could have the unintended consequence of rendering rates *less* just and reasonable.[27] The Joint Consumers do not refute any of these facts. They only speculate as to potential risks attendant to highly concentrated markets. That alone is not grounds for legal error.[28]

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[22] D.16-12-025, at pp. 184-185 [Finding of Fact Number 4].

[23] D.16-12-025, at pp. 69-71.

[24] D.16-12-025, at pp. 2-5, 184-185 [Finding of Fact Numbers 1 & 2]. There are 55 million voice lines in California, of which only 1.5 million are landline. Approximately 40 million represent wireless service. (D.16-12-025, at p. 9.)

[25] D.16-12-025, at p. 22.

[26] D.16-12-025, at pp. 69-71, 184-185 [Finding of Fact Numbers 4 & 7(e)].

[27] D.16-12-025, at pp. 152, 188-189 [Conclusion of Law Number 23].

[28] See, e.g., *Application of The Utility Reform Network for Rehearing of Resolution E-3689, Approving Southern California Edison Company's Advice Letter 1465-E to Reopen and Expand the Interruptible Program* [D.00-12-066] (2000) at pp. 5-6 (slip op.); *In the Matter of the Application of San Diego Gas &*

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Still, the Joint Consumers suggest that at the very least more investigation is needed because it was difficult to obtain complete and reliable price information. They accuse the Commission of simply throwing up its hands and closing the docket. (Rhg. App., at pp. 7-8.)

We agree there were certain difficulties obtaining clear market and price information in this proceeding. That does not mean we just threw up our hands and walked away.[29] As already explained, the Decision provided for several ongoing investigatory and monitoring activities,[30] and we expressly stated our intent to take any steps found necessary and within our jurisdiction ensure rates are just and reasonable if we find that is warranted in the future.[31] Again, the Joint Consumers ignore these steps and fail to explain why they will not be sufficient to provide adequate continued monitoring, oversight, and the opportunity to take corrective action if warranted.

C. Intermodal Market

The Joint Consumers contend the Decision wrongly relied on the intermodal market to protect California customers. They argue that because most wireless markets are highly concentrated, it is unclear wireless services adequately

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Electric Company and Southern California Gas Company for Authority to Revise Their Rates Effective January 1, 2013, in Their Triennial Cost Allocation Proceeding [D.16-05-024] (2016) at pp. 7-8 (slip op.); *Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company Regarding Anti-Smart Meter Consumer Groups* [D.14-12-027] (2014) at pp. 2-3 (slip op.).

[29] D.16-12-025, at pp. 119-124. The Decision also explained that to some degree, the lack of total clarity is attributable to the fact that most customers purchase voice service as a bundle with other Internet and/or cable services. Bundle prices often vary, and comparisons are difficult where prices may vary with time and location. And despite allegations of inflated stand-alone prices, there was no evidence to prove that claim. (D.16-12-025, at pp. 124-125, 187 [Finding of Fact Number 13.)

[30] See *ante,* fn. 11. See also Competition OII, at p. 21 (slip op.) [Noting other subject specific proceedings such as Service Quality (R.11-12-001), Lifeline and Basic Service (R.11-03-013), pole attachments and rights-of-way (R.06-10-005), rural call completion (R.14-05-012), and CHCF-A and competition in rural service areas (R.11-11-007).

[31] D.16-12-025, at pp. 152, 156-159.

discipline the price of other voice services. Thus, they say more analysis is needed. (Rhg. App., at pp. 8-10, citing D.16-12-025, at pp. 37, 39-40, 42-43, 63-64, 78, 107-108.)

We recognized there are certain limitations in the current telecommunications marketplace.[32] But on whole, the evidence showed that competition in the intermodal market is strong, and in the largest intermodal voice markets concentration was only moderate (as compared to high).[33] Our review also supported a conclusion that wireless voice service is, in general, a reasonable economic substitute for landline voice service.[34] And although the extent of price discipline may be somewhat unclear, wireless service alternatives do appear to reasonably discipline the cost of wireline voice service.[35]

In addition, while concentration in some markets appears high, competition is not as constrained as the Joint Consumers suggest.[36] As noted above, the data showed no monopoly in any one market, with 96% of California households having access to at least three voice providers, and 87% having access to at least six.[37]

Parties also generally agreed that one area which does greatly impact the competitiveness of both wireless and wireline service, and hence the price of all services,

[32] See, e.g., D.16-12-025, at p. 172.

[33] D.16-12-025, at pp. 70, 185 [Finding of Fact Number 7(e)].

[34] D.16-12-025, at p. 38.

[35] D.16-12-025, at pp. 39-41.

[36] D.16-12-025, at pp. 73-81; CPUC Communications Division Report, *Market Share Analysis of Retail Communications in California June 2001 Through June 2013* (January 5, 2015), located at: http://www.cpuc.ca.gov/NR/rdonlyres/57DED05C-AE4A-4DEF-87CB-27AAF2FFA0C5/0/CommunicationsMarketShareReport_CA_Jan2015.pdf. This and other relevant competition-related reports were incorporated into the record by the Competition OII, Appendix A, as well as the Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, dated July 1, 2016, at pp. 17-18.

[37] D.16-12-025, at pp. 9-10.

is access to poles and conduits by new market entrants. That is an area where the Commission can have a direct impact, and will strive to do so.[38]

Finally, the Joint Consumers criticize the determination to address issues related to low income, disabled, and rural/tribal issues in other proceedings and via administration of the telecommunications Public Purpose Programs. They argue that even if there is competition in the intermodal market, there are differences between carriers such that some have no Carrier of Last Resort and Public Purpose Program obligations. Thus, the decision to defer issues involving low income, disabled, and rural/tribal customers to Public Purpose Program administration leaves no clear path to ensure the needs of all customers will be addressed. (Rhg. App., at pp. 10-11.)

We see two issues here. One, was it reasonable and lawful to find that some issues are best addressed in other Commission forums? Two, is this Commission legally able or obligated to require that all carriers in a competitive marketplace provide Carrier of Last Resort and Public Purpose Program services? The answers to these questions are yes, and no, respectively.

With respect to the proper forum for some issues, we found that low income, disabled, and rural/tribal customers do not generally realize the benefits of technological innovations at the same pace as other customers. Low income customers are apt to experience affordability issues, while rural customers may experience more availability/lack of deployment issues.[39] How to best address these different needs is an administrative, not legal, issue.

Here, we recognized from the outset that certain issues subject to this OII must be coordinated with related Commission proceedings. They include Rulemaking

[38] D.16-12-025, at pp. 141-142, 162-164 [Also noting that the interconnection dispute resolution process can reduce barriers to market entry, and directing staff to host a workshop and provide feedback on how this process can be improved.].

[39] D.16-12-025, at pp. 143-147.

proceedings that focus on Service Quality, Lifeline and Basic Service, rural call completion, competition in rural service areas, and pole attachments and rights-of-way.[40]

We also oversee six Universal Service/Public Purpose Programs, each focused on particular services, issues, and customers. Each program is governed and administered in accordance with specific statutes and Commission decisions.[41]

To the extent this OII identified issues directly related to one of the Rulemakings or Public Purpose Program areas, it was reasonable and lawful to find that the issues will be most effectively addressed in the appropriate dedicated forum. It is simply a matter of administrative efficiency to avoid a duplication of efforts.

Dedicated forums are also better able to comprehensively consider and address the needs of specific customers. For example, affordability issues directly relate to Lifeline Service,[42] while availability issues may best be addressed in either the Basic Service or rural competition proceedings. The Joint Consumers seem skeptical that coordination will occur or suggest it is unclear what must be done. But their skepticism does not equate to legal error on our part.

With respect to Carrier of Last Resort and Public Purpose Program obligations, there may be some merit to the general concern that the needs of some low income, disabled, and rural/tribal customers may not be entirely resolved if certain customers are served by carriers without such obligations.

Currently, the law only establishes a policy to encourage expanded access to telecommunications services, and promote the provision of affordable basic service to

[40] Competition OII, at pp. 15, 21 [Ordering Paragraph Number 2]. See also *ante*, fn. 31.

[41] See http://www.cpuc.ca.gov/communications identifying the California Advanced Services Fund ("CASF"), the California High Cost Fund A ("CHCF-A"), the California High Cost Fund B ("CHCF-B"), California Lifeline ("ULTS"), the California Teleconnect Fund ("CTF"), and the Deaf and Disabled Telecommunications Program ("DDTP"). (See also e.g., Pub. Util. Code, §§ 270, 270.1, 271, 275.6, 278, 709, 709.5 & 871.5.)

[42] See, e.g., Pub. Util. Code, §§ 709, subd. (a) & 871.5.

the greatest number of Californians possible.[43] There is no legal mandate that all carriers in a competitive marketplace be subject to Carrier of Last Resort / Public Purpose Program responsibility.

In addition, jurisdictional limits on our authority to regulate certain carriers and services, as well as factors we have no control over such as an individual customer's choice of carrier and/or geographic and economic issues that may limit the availability of services can impact whether the needs of all Californians are fully met.[44] That does not mean the Decision violated any legal requirement. Nor does it mean that Public Purpose Program administration areas are not the best forums to address the needs of as many low income, disables, and rural/tribal customers as possible. For these reasons, we find no legal error.

D. Data Collection Issues

Because there were data collection issues in this proceeding, the Joint Consumers argue any conclusions based on insufficient data must be reversed, and the docket should have remained open for more investigation.[45] (Rhg. App., at pp. 11-13.) We disagree.

In spite of certain data collection issues, we found that on whole there was sufficiently granular information to render the findings and conclusions necessary to this Decision.[46] And the Joint Consumers fail to identify any particular conclusion in the Decision that was factually flawed or unsupported by the evidence.

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[43] Dee, e.g., Pub. Util. Code, §§ 709, subd. (d) & 871.5, subd. (a).

[44] D.16-12-025, at pp. 156-169. Still, the record showed that 77% of rural households and 75% of tribal households are served by three or more voice providers. Only one and one-half percent of all California households have access to no voice provider, with 44,246 of those in rural areas. (D.16-12-025, at p. 10.)

[45] See, e.g., D.16-12-025, at pp. 119-123.

[46] D.16-12-025, at p. 185 [Finding of Fact Number 5] [Stating: "Data submitted by Respondents in this proceeding provides information, including in particular additional census block data, which allows a granular assessment of the individual markets defined by technology and / or geography and other demographic factors".].

It is also relevant to note that certain data collection issues are simply a function of how the market is structured, how it operates, and how services and prices are bundled. For example, the Commission noted:

> It is difficult to obtain objective and comprehensive price data in an unregulated market where prices can change daily and may depend on zip code or other micro-targeting by communications carriers, and when voice (or broadband) services are sold as part of a bundle….Given the growth in bundling of voice, data and video offerings, separating voice from data and other charges becomes increasingly difficult.[47]

These difficulties do not mean it was impossible to render any accurate or useful conclusions. And where we found more information was needed to make an assessment, we ordered carriers to provide additional data, both during the proceeding and in the final Decision. The required post-Decision reporting in particular will assist in our continued monitoring of the market. There was no established need to keep the docket open for that purpose.[48]

E. Comments on the Proposed Decision

In comments on the Proposed Decision, the Joint Consumers urged that we to leave this docket open for further review and analysis. They argue by closing this docket, we failed to adequately address their comments. (Rhg. App., at p. 13.)

The Decision did explicitly address the comments advocating that this proceeding be kept open. We explained that the purpose of the proceeding had been reasonably achieved, i.e., to provide a snapshot of the market ten years after the URF decisions. And no clear need for immediate intervention, action, or rules was established.

[47] D.16-12-025, at pp. 58-59, 119-124, 187.

[48] To the extent data collection are the result of the withholding of information, it is a discovery issue that is not uncommon in regulatory proceedings. Where it impedes adequate consideration of the issues, the Commission is not without authority to compel the production of additional information (Pub. Util. Code, §§ 311-314.5. See also D.16-12-025, at pp. 174-179 [Discussing the Commission's jurisdiction to gather and analyze data regarding the broadband market.].)

Thus, it was not necessary to keep the docket open.[49] The Joint Consumers disagree. But disagreement is not grounds for legal error.[50]

The Joint Consumers counter that by not doing more, we risk violating various statutory duties. They also express their view that leaving work on certain issues to other forums was an anemic response to the findings of customer harm.

We would agree that some market segments and customers may have fared better than others in the competitive marketplace. But there was no evidence to prove any clear and current customer harms. And while the Joint Consumers make sweeping allegations of market failures, they fail to actually establish any. Accordingly, there is no basis to find legal error.[51]

III. CONCLUSION

For the reasons stated above, the Application for Rehearing of D.16-12-025 is denied because no legal error was established.

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[49] D.16-12-025, at pp. 166-170.

[50] *Southern California Edison Company v. Public Utilities Commission* (2005) 128 Cal.App.4th 1, 8 [The fact that Edison does not like the Commission's findings and conclusions simply does not provide grounds for reversal."]; *Goldin v. Public Utilities Commission* (1979) 23 Cal.3d 638, 670.

[51] The Joint Consumers take issue with our statement regarding circumscribed legal authority over some telecommunications marketplace issues. They argue that is a conclusion not supported by the record, nor was it briefed since this was strictly a data gathering proceeding. (Rhg. App., at p. 13, fn. 51.) It was not necessary to brief jurisdictional issues nor did the Decision render any formal conclusion regarding the limits of its regulatory authority in relation to the goals of this proceeding. It merely opined in a general manner regarding legal considerations impacting State regulation and the fact that any potential actions must be considered in light of deregulation and the move to a competitive marketplace, certain statutory limitations, and the overlay of federal authority. (D.16-12-025, at pp. 72, 156-169 [Discussing, among other authorities, *URF I, URF II, Verizon v. FCC* (U.S. App. D.C. 2014) 740 F.3d 623, and § 706 of the Federal Communications Act (47 U.S.C. §1302(a).)] See also Pub. Util. Code, §§ 709, subd. (g) & 709.5.

THEREFORE, **IT IS ORDERED** that:

1. The Application for Rehearing of D.16-12-025 is denied.
2. This proceeding, Investigation (I.) 15-11-007 is closed.

This order is effective today.

Dated July 13, 2017, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners